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October 21, 2010

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BOSTON
DALLAS
DELAWARE
HOUSTON
MUNICH
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SILICON VALLEY
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WASHINGTON, DC

Re: *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265

Dear Ms. Dortch:

This letter follows up on an *ex parte* meeting on October 5, 2010, between representatives of Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless") and members of the Wireless Telecommunications Bureau. During this meeting, SouthernLINC Wireless agreed to provide the Bureau with additional discussion and analysis of certain issues confirming the Commission's legal authority to adopt an automatic roaming obligation for data services.[1]

As set forth in detail in SouthernLINC Wireless' previous filings in this proceeding, the Commission possesses ample legal authority to adopt an automatic roaming obligation for data services. The sources of the Commission's authority include its plenary authority under Title III of the Communications Act over radio communication in general, its Title II authority over transmission services such as wholesale automatic roaming, as well as the Commission's ancillary jurisdiction under Title I. Each of these titles provides a separate and independent basis for Commission action on data roaming.

Despite this clear grant of authority, the nation's two dominant wireless carriers now argue that commercial mobile data services – including wholesale, carrier-to-carrier data roaming – are private mobile radio services (PMRS), and that the Commission is therefore prohibited by Section 332(c)(2) of the Act from adopting a data roaming obligation. This new argument, which was not introduced until nearly five years after the Commission initiated its inquiry on automatic roaming for data services, is both conclusory and wrong.

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[1] / *See* SouthernLINC Wireless Notice of *Ex Parte* Presentation, WT Docket No. 05-265 (filed Oct. 6, 2010).

As discussed below, the statutory language of Section 332 of the Act, its legislative history, and established Commission precedent clearly demonstrate not only that data roaming is not PMRS but also that – even if it were – Section 332(c)(2) nevertheless does not abrogate the Commission's legal authority to adopt a data roaming obligation.

Accordingly, SouthernLINC Wireless urges the Commission to adopt a straightforward, technology-neutral obligation to provide data roaming upon reasonable request to any technologically compatible service provider on reasonable and not unreasonably discriminatory terms and conditions.

In addition, in order to promote competition and protect the interest of wireless consumers, the Commission should ensure that disputes over data roaming are resolved as effectively and expeditiously as possible by requiring the use of the Commission's Accelerated Docket for all complaints involving data roaming. As discussed herein, the Commission has the authority under either Title III or Title I of the Act to apply its existing complaint process and procedures – including the Accelerated Docket procedures – to complaints involving services and entities that may not already be subject to Section 208 of the Act.

Data Roaming is Not PMRS

First, to the extent data roaming services do not meet the literal definition of "commercial mobile service" in Section 332(d)(1) of the Act, these services nevertheless are "functionally equivalent" to commercial mobile services and thus subject to the same regulatory treatment.

When Congress amended Section 332 in 1993 to bring all mobile services together under a single, comprehensive regulatory framework, it adopted the following definitions in Section 332(d):

> … (1) the term "commercial mobile service" means any mobile service … that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, *as specified by regulation by the Commission*;
>
> … (3) the term "private mobile service" means any mobile service … that is not a commercial mobile service *or the functional equivalent of*

> *a commercial mobile service, as specified by regulation by the Commission*.[2]

In adopting these definitions, Congress sought to give the Commission "flexibility to establish appropriate levels of regulation for mobile service providers,"[3] as evidenced by the explicit language in the statute that the definitions in Section 332(d) be interpreted and applied "as specified by regulation by the Commission."[4]

Congress furthermore included the "functional equivalent" provision in the definition of private mobile service to provide the Commission the flexibility and authority to specify by regulation either (i) that a private service that meets one or more of the definitional criteria for "commercial mobile service" (such as a private land mobile system that is interconnected with the public switched network) should still be treated as a "private mobile service"; or (ii) that a for-profit communications service (such as data roaming) is the functional equivalent of a "commercial mobile service" and therefore should be regulated as a commercial mobile service.[5]

Significantly, Congress did not include in the statute any criteria, factors, or other guidance for determining whether a mobile service is the "functional equivalent" of a commercial mobile service under Section 332, but instead granted full discretion for making such determinations to the Commission. [6] Indeed, the Commission has already concluded that – contrary to AT&T's assertions – when Congress adopted the "functional equivalent" test, "Congress intended to *narrow* the scope of the definition for *private* mobile radio service."[7]

Accordingly, while the Commission determined that a mobile service that does not meet the literal definition of a commercial mobile radio service (CMRS) would be presumed to be a private mobile service, the Commission also made clear that this presumption could be overcome, based on an evaluation of a variety of factors. Although the Commission has previously provided examples of the various factors it

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[2] / 47 U.S.C. § 332(d) (emphasis added).

[3] / *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1417 ¶ 12 (1994) ("*1994 Regulatory Treatment Order*").

[4] / *See* 47 U.S.C. §§ 332(d)(1) and (3).

[5] / *See* H.R. REP. NO. 103-213, at 496 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1088, 1185 ("1993 Conference Report").

[6] / *1994 Regulatory Treatment Order*, 9 FCC Rcd at 1446 ¶ 77 ("Congress intended to leave this issue [of functional equivalence] to the Commission's expertise.").

[7] / *Id*. at 1445 ¶ 76 (emphasis added).

may consider – such as consumer demand and customer perception[8] – the Commission is free to consider and evaluate "any other relevant evidence or matters that the Commission may officially notice" as well.[9]

The flexibility and discretion granted to the Commission by Congress through the statute demonstrate a recognition that communications technologies and the communications market are constantly evolving and that the needs and demands of these evolving markets must not be constrained by past precedent that may no longer be relevant to today's marketplace and industry realities. In evaluating whether or to what extent data roaming is the functional equivalent of a commercial mobile service, the Commission should embrace this flexibility and discretion rather than attempt to force a service that has largely developed in recent years into an outdated and increasingly ill-suited framework.

From the perspective of today's wireless consumer, mobile voice and mobile data services are interchangeable and readily substitutable communications options generally provided by the same service provider over the same device.[10] For example, depending on circumstances and personal preference, a wireless consumer has the option of using a single device to communicate with others through a "traditional" voice call, by text messaging, through an exchange of e-mails, or even by placing a video call through a VoIP application such as Skype. [11]

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[8] / *Id*. at 1447 ¶ 80; 47 C.F.R. § 20.9(a)(14)(ii); *See also Beehive Tel. v. Bell Operating Cos.*, File No. E-94-57, Memorandum Opinion and Order, 10 FCC Rcd 10562, 10567 ¶ 28 (1995) (discussing customer perception as an "important aspect" of the functional equivalency test).

[9] / *1994 Regulatory Treatment Order*, 9 FCC Rcd at 1447 ¶ 80.

[10] / *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81 (rel. May 20, 2010) ("*Fourteenth Report*") at ¶ 22 ("[C]onsumers typically receive mobile voice and data services on a single end-user device and purchase these devices from a single provider. Although mobile data services are not always offered in conjunction with mobile voice service … mobile wireless subscribers who use their handsets for data services typically purchase these services as either an add-on to voice services or as part of a bundled voice and data plan; in some cases, they may not be able to purchase data services independent of voice services.").

[11] / In the *Fourteenth Report*, the Commission cited to a study estimating that, in 2008, "the average mobile wireless subscriber spent 70 percent of his/her time on a mobile device making calls and 30 percent using a data application." *Fourteenth Report* at ¶ 318. Since 2008, this ratio between voice usage and data usage of mobile devices has likely shifted towards a more even voice/data distribution as voice traffic levels have declined and data traffic levels have increased significantly. *See, e.g., Fourteenth Report* at ¶ 176 (noting the trend in declining voice minutes) and ¶ 181 (discussing the significant growth in mobile data usage); *See also Id*. at ¶ 183 ("Individual mobile wireless service providers, such as AT&T and Verizon Wireless, confirm that their customers are migrating from voice-centric services to data-centric services.").

Consumers not only have the option to freely choose and substitute among voice and data communications over wireless devices, but they are also, in fact, doing so. As the Commission expressly found in its *Fourteenth Report* on mobile wireless competition, "consumers are increasingly substituting among voice, messaging, and data services, and, in particular, are willing to substitute from voice to messaging or data services for an increasing portion of their communications needs."[12] Thus, from the consumer perspective, mobile voice services and mobile data services are functionally equivalent.

Because consumers perceive mobile voice and mobile data services to be functionally equivalent, they likewise expect to have the same seamless connectivity for mobile data services when they travel outside their home network service areas as they do for mobile voice services. From the consumer perspective, roaming is roaming – regardless of whether the roaming involves voice or data service – and data roaming is thus not only "functionally equivalent" to voice roaming in the view of consumers, but is essentially the same thing. Because they are not "amateur engineers or telecom lawyers,"[13] consumers are thus understandably confused and frustrated when they find themselves unable to send or receive e-mails or utilize other mobile data services to which they subscribe even though they are able to place and receive voice calls from the same location.

Data roaming is also the functional equivalent of voice roaming from the perspective of the wireless carriers who are the consumers of data roaming at the wholesale level. From the carrier perspective, data roaming is a wholesale, carrier-to-carrier transport service that, from a functional perspective, is no different from the underlying wholesale transport service used to facilitate voice roaming. Any distinctions between the transport services used to provide voice roaming and those used to provide data roaming arise solely from the use of different technologies to accomplish the same functions, and even these distinctions are already becoming irrelevant as wireless service providers transition to all-IP networks. For example, applications such as DNS lookup, Simple IP, Mobile IP, and "tunneling" protocols are essentially addressing, registration, and authentication functions such as those used in the routing of *any* roaming call, whether voice, data, or push-to-talk.

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[12] / *Fourteenth Report* at ¶ 8. The Commission further noted a "trend of declining voice minutes" that "may be due to substitution by mobile messaging services." *Id*. at ¶ 176.

[13] / *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007), Statement of Commissioner Michael J. Copps ("Consumers should not have to be amateur engineers or telecom lawyers to figure out which mobile services they can expect to work when they travel.").

Moreover, data roaming could also be viewed as the functional equivalent of CMRS, if not CMRS itself, because it gives consumers the capability to interconnect with other users of the public switched network. With the use of IP-based protocols on wireless networks, it is becoming very easy for consumers subscribing to wireless data plans to make and receive calls from other users of the public switched network without accessing the wireless carrier's dedicated voice service offering. Indeed, Verizon Wireless actively promotes the use of its wireless service for wireless data users to make and receive calls on a worldwide basis using a Skype application on the user's mobile handset.[14]

Similarly, Skype is available as an application on iPhones used on AT&T's 3G network. When responding to Commission inquiries about VoIP applications that could be used by consumers using its wireless data services, AT&T acknowledged that the allowance of such services would be competitive with its own dedicated voice offerings.[15] AT&T further acknowledged that, when it negotiated with Apple for the introduction of the iPhone on its network, both AT&T and Apple "required assurances that the revenues from the AT&T voice plans available to iPhone customers would not be reduced by enabling VoIP calling functionality on the iPhone."[16] Thus, there can be no question that mobile data services can and do allow consumers to access the public switched network and therefore are, at a minimum, the functional equivalent of CMRS, if not already CMRS by definition.

For these reasons – and as demonstrated throughout the extensive record of this docket – the Commission can and should find that, to the extent roaming is a mobile service, data roaming is the functional equivalent of a commercial mobile service and thus is not a private mobile service under Section 332 of the Act.

In addition to the plain language of the statute, the legislative history of Section 332 and the record of Section 332's implementation by the Commission further show that Congress never intended the PMRS provisions of Section 332 to be interpreted and applied as AT&T now advocates. In 1996, in connection with the implementation of Section 332 into the Commission's regulations, the Wireless Telecommunications Bureau issued two documents which discussed the distinction between commercial mobile services and private mobile services under the recently-enacted legislation.

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[14] / See information on Verizon Wireless' "Skype Mobile" service at http://phones.verizonwireless.com/skypemobile/ (last viewed Oct. 21, 2010).

[15] / Letter from James W. Cicconi, AT&T, to Ruth Milkman, Chief, Wireless Telecommunications Bureau, dated August 21, 2009, RM-11361, RM-11497, available at http://wireless.fcc.gov/releases/8212009_ATT_Response_FCC_iPhone_Letter.pdf (last viewed Oct. 21, 2010).

[16] / *Id*.

Although they are not precedential, these documents nevertheless provide valuable insight into the understanding that Congress and the Commission had of the services that were intended to be covered under the private mobile service provisions of Section 332. The first document is a Staff Report on private mobile services prepared by the Wireless Telecommunications Bureau that provides a detailed discussion of the history and development of commercial and private mobile services and the issues that the 1993 legislation was intended to address.[17] The second document is a Public Notice issued by the Bureau to provide guidance to Part 90 licensees who were subject to reclassification from PMRS to CMRS under the new Section 332 framework.[18] Together, these documents demonstrate that neither Congress nor the Commission contemplated data roaming as the type of service that was intended to fall within the scope of the "private mobile service" definition of Section 332(d). Indeed, the Staff Report and the Public Notice instead support the position that, at the very least, data roaming is more appropriately viewed as the functional equivalent of CMRS.

The Commission's Authority Under Title III Generally and Section 332(a) Specifically

Even if one assumes that data roaming is PMRS, such a determination would not stand as a bar to the Commission's authority to adopt a data roaming obligation pursuant to its authority under Title III over radio communication in general and its authority under Section 332(a) over PMRS in particular.

The nation's radio spectrum is a finite public resource. Managing this public resource and ensuring that the use of this scarce resource serves the public interest is the central purpose of Title III of the Communications Act. For this reason, Title III grants the Commission authority over radio transmission, regardless of whether the service is used to provide is a "telecommunications" or "information" service, whether the service is provided on a common carrier or private carrier basis, or whether the service interconnects with or otherwise "touches" the public switched network. In addition to the broad grant of authority provided to the Commission

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[17] / Michele Farquhar, *et al*, *Private Land Mobile Radio Services: Background*, Wireless Telecommunications Bureau Staff Paper, FCC (1996). The complete 78-page Staff Report is publicly available through the Commission's website at http://wireless.fcc.gov/reports/documents/whtepapr.pdf (last viewed Oct. 21, 2010).

[18] / *Information for Part 90 Licensees Subject to Reclassification as Commercial Mobile Radio Service Providers on August 10, 1996 – Wireless Bureau Answers Frequently Asked Questions Regarding CMRS Status*, Public Notice, 11 FCC Rcd 9267 (1996).

under Section 301, Title III contains numerous provisions that firmly establish the Commission's legal authority to adopt data roaming obligations.[19]

AT&T and Verizon Wireless argue that data roaming is PMRS, and therefore Section 332(c)(2) prevents the Commission from imposing "common carrier" obligations on data roaming. However, this argument disregards established precedent affirming that the Commission's authority under Title III includes the authority to extend specifically targeted common carrier-type regulations to services that may or may not be considered common carrier services under Title II or Section 332, if the Commission determines that doing so is in the public interest.

For example, as previously discussed in this proceeding,[20] when the Commission adopted the wireless resale rule in 1996, it exercised its Title III authority to apply the resale rule not only to Title II voice services but also to data and other non-Title II services as well.[21] The Commission reaffirmed its action on reconsideration three years later, holding that "[a]rguments that the scope of the resale rule is overbroad because it extends to non-Title II services are inapt."[22] The Commission specifically affirmed the applicability of the resale rule to mobile data services, holding that it would be "imprudent to distinguish between data services and other services offered using CMRS spectrum."[23] According to the Commission, any rule that distinguished between voice and data services "would be difficult to enforce" because "it would be difficult to determine, as an enforcement matter, whether a particular licensee was using its spectrum to transmit voice or data."[24]

The clear precedent established by these decisions demonstrates that the Commission possesses the requisite legal authority under Title III to adopt a data roaming obligation, regardless of whether data roaming is CMRS or PMRS or whether the obligation in question mirrors certain obligations applied to common carriers.

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[19] / *See, e.g., Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 10-59 (rel. April 21, 2010) ("*2010 Roaming Recon. Order*" and "*Second FNRPM*" respectively) at ¶¶ 66-67.

[20] / *See, e.g., Second FNPRM* note 198; *See also* Reply Comments of SouthernLINC Wireless (filed Oct. 29, 2007) at 27-29; Reply Comments of Leap Wireless (filed July 12, 2010) at 12-13

[21] / *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, First Report and Order, 11 FCC Rcd 18455 (1996).

[22] / *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, Memorandum Opinion and Order and Order on Reconsideration, 14 FCC Rcd 16340, 16352-53 ¶ 27 (1999) ("*Resale Recon Order*").

[23] / *Id*. at 16367 ¶ 59.

[24] / *Id*.

Moreover, even if data roaming is considered to be PMRS, the Commission could adopt a data roaming obligation pursuant to its authority to regulate private mobile services under Section 332(a) of the Act, which states that "[i]n taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider" whether such action will:

- Promote the safety of life and property;
- "Improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands";
- "Encourage competition and provide services to the largest feasible number of users"; or
- "Increase interservice sharing opportunities between private mobile services and other services."[25]

As demonstrated throughout the extensive record of this proceeding, the adoption of a data roaming obligation is a legitimate and prudent means to manage the spectrum used for mobile data services, regardless of whether such services are viewed as PMRS or CMRS. Specifically, a data roaming obligation would ensure that the nation's spectrum resources are utilized in the most efficient manner possible to ensure that all Americans have access to mobile data services wherever they live, work, or travel. The record of this proceeding further shows that a data roaming obligation would advance all of the Section 332(a) criteria listed above.

Finally, to the extent a data roaming obligation may be considered a common carrier-type regulation in addition to an action to manage the spectrum, the history of the wireless resale rule (discussed above) provides ample precedent for the Commission's authority to extend such a regulation to non-common carrier wireless services.

The Data Roaming Obligation

SouthernLINC Wireless again urges the Commission to exercise its legal authority to adopt a simple, straightforward, technology-neutral rule for data roaming that mirrors the rule adopted by the Commission for voice, SMS, and push-to-talk roaming services.[26]

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[25] / 47 U.S.C. § 332(a).

[26] / 47 C.F.R. § 20.12(d) (effective May 28, 2010); 75 Fed. Reg. 22263.

Specifically, the Commission should require the provision of automatic roaming for data services upon reasonable request to any technologically compatible service provider on reasonable and not unreasonably discriminatory terms and conditions. A request for data roaming from a technologically compatible service provider should be considered presumptively reasonable, with this presumption being rebuttable on a case-by-case basis.

Specific issues or disputes regarding the reasonableness or technical feasibility of a request for data roaming should be addressed on an individual case-by-case basis.[27] In evaluating such disputes, the Commission should consider the totality of the circumstances, with consideration given to a non-exclusive, non-exhaustive list of factors.[28] While in general these factors may be similar to those enunciated by the Commission for automatic voice, SMS, and push-to-talk roaming,[29] SouthernLINC Wireless submits that there are additional factors that should be considered by the Commission with respect to data roaming.

For example, when reviewing a dispute involving data roaming, the Commission should evaluate the reasonableness of the rates offered by the host carrier, particularly to the extent the offered rates are tantamount to a denial of roaming.[30] SouthernLINC Wireless also agrees with T-Mobile that the Commission should consider: (i) the price, terms, and conditions on which a host carrier is providing data roaming to other carriers; (ii) the price, terms, and conditions on which the host carrier is providing voice roaming to the requesting carrier and to other carriers; and (iii) the length of time negotiations have continued without agreement.[31]

Moreover, because the timely resolution of disputes involving roaming is essential to promoting competition and protecting the interest of wireless consumers, the Commission should require the use of the Commission's Accelerated Docket for all complaints involving data and/or voice roaming.[32] As discussed in more detail below, the Commission has the authority under both Title III and Title I of the Act to apply its complaint procedures – including its Accelerated Docket procedures – to

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[27] / *See 2010 Roaming Recon. Order*, ¶¶ 36-40.

[28] / *See id.*, ¶ 39.

[29] / *Id*.

[30] / *See* Comments of T-Mobile (filed June 14, 2010) at 20; Reply Comments of SouthernLINC Wireless (filed July 12, 2010) at 27-28.

[31] / *See* T-Mobile *Ex Parte* Presentation, Oct. 13, 2010, at 8.

[32] / *See, e.g.*, Reply Comments of SouthernLINC Wireless (filed July 12, 2010) at 28; Comments of T-Mobile (filed June 14, 2010) at 20-21.

complaints involving services that may not already be subject to Section 208 of the Act.

This approach would provide the industry and the public with certainty regarding the availability of automatic roaming for data services. As discussed above, consumers expect the same seamless coverage for both voice and data services, especially when both services are provided over the same mobile device, and thus there is far less potential for consumer confusion if voice roaming and data roaming are addressed by the Commission in essentially the same manner. From the carrier perspective, consistent regulatory treatment of voice roaming services and data roaming services would make both business planning and the negotiation of roaming agreements far more efficient, especially as voice and data services are often intertwined in a carrier-to-carrier roaming arrangement.

At the same time, the adoption of a simple, straightforward, technology-neutral data roaming rule would discourage regulatory gamesmanship and promote the innovation and deployment of new wireless technologies and services by ensuring that a service provider's roaming obligations do not drive its technology decisions, and vice versa. To the contrary, any data roaming rule that includes provisions or exceptions based on specific technologies, versions of the same technology, or generations of technologies would violate the Commission's guiding principle of technological neutrality, would quickly become obsolete as technologies change, and could lead to further disputes over the application of such exceptions to similar technologies.

Furthermore, any technology-based distinctions adopted as part of a data roaming rule would effectively chill innovation in new wireless technologies and services by burdening some technology solutions while favoring others for no sound engineering or public policy reason. Technology-based distinctions would also encourage regulatory gamesmanship in the deployment of networks, services, and technologies by carriers seeking to minimize or avoid any data roaming obligation, just as certain carriers at one time sought to avoid the obligation to pay interstate access charges for interexchange calls by configuring their networks and services to employ IP formatting and transport over the Internet backbone.[33] As the Commission stated in rejecting AT&T's Petition for Declaratory Ruling on its IP telephony service, "we see no benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules."[34]

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[33] / *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004).

[34] / *Id.*, 17 FCC Rcd at 7468 ¶ 17.

Complaints and Disputes Involving Data Roaming

SouthernLINC Wireless has consistently encouraged the Commission to apply its Section 208 complaint procedures in general,[35] and its Accelerated Docket procedures in particular,[36] to complaints involving roaming for voice and/or data services. The Commission has ample authority under either Title III or Title I of the Act to apply these complaint procedures to services that may not already be subject to Section 208 of the Act.

While the Commission's procedural rules for formal and informal complaints – as set forth in Sections 1.711 through 1.735 of the Commission's Rules – were initially adopted for the handling of complaints filed against common carriers pursuant to Section 208 of the Act, there is nothing in the rules, in the Act, or in Commission precedent that prohibits these same procedural rules from being applied to complaints involving non-common carrier or other services not already covered by Section 208. In fact, the Commission itself issued a *Notice of Proposed Rulemaking* in 2002 in which it proposed to do exactly that.[37]

Specifically, the Commission proposed, on its own motion, to establish a "uniform, streamlined consumer complaint process that will be applicable to all services regulated by the Commission that are not currently covered by the common carrier informal complaint rules."[38] The Commission explicitly stated that this complaint mechanism would be patterned after its existing rules for complaints filed against common carriers pursuant to Section 208 of the Act.[39] The Commission further found that it has the authority to extend its complaint process and procedures to non-common carriers and other entities regulated by the Commission pursuant to Sections 1, 2, 4(i), 4(j), and 303(r) of the Act.[40] Although the Commission ultimately dropped its proposal, it should be noted that at no time during the entire proceeding on this *NPRM* did any party ever question or challenge the Commission's legal authority to extend its complaint process to non-common carrier services and entities.

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[35] / *See* 47 C.F.R. §§ 1.711 – 1.735.

[36] / 47 C.F.R. § 1.730.

[37] / *Establishment of Rules Governing Procedures to Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission, Amendment of Subpart E of Chapter 1 of the Commission's Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers*, CI Docket No. 02-32, CC Docket No. 94-93, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 17 FCC Rcd 3919 (2002) ("*Informal Complaint Procedures NPRM*").

[38] / *Id.* at 3920 ¶ 3.

[39] / *See id*. at ¶ 2.

[40] / *Id.* at 3921-22 ¶ 5 and 3932 (Initial Regulatory Flexibility Analysis).

For these reasons, SouthernLINC Wireless submits that if the Commission should adopt a data roaming obligation pursuant to its authority under Title III or Title I of the Act, rather than under Title II, the Commission still has the authority to apply its complaint process and procedures – including its Accelerated Docket procedures – to complaints involving data roaming.[41]

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For the reasons set forth above, SouthernLINC Wireless respectfully urges the Commission to act swiftly and promptly to adopt a data roaming obligations that will make access to mobile data services available to all Americans throughout the country, regardless of where they may work, live, or travel.

[41] / In addition to this authority, SouthernLINC Wireless notes that, under its Title III authority, the Commission could also act on complaints involving an alleged violation of the data roaming rule through the issuance of cease-and-desist orders pursuant to Section 312(b) of the Communications Act, 47 U.S.C. § 312(b); *See* 47 C.F.R. §§ 1.91 and 1.92 (procedures for issuance of cease and desist orders); *See also 700 MHz Order*, 22 FCC Rcd 15289, 15373-74 ¶¶ 229-230 (2007) (listing cease-and-desist orders issued pursuant to Section 312(b) of the Act as among the means available to the Commission to enforce the "open access" requirements of the 700 MHz C Block) .

If you should have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

__/s/_Shirley S. Fujimoto____

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